

### **REMARKS**

Claims 19-68 are pending. Claims 19 and 52 have been amended. Claims 36-51 and 57-68 have been withdrawn from consideration as being drawn to a non-elected species.

The Office Action indicates that the Election of Species Requirement “is still deemed proper and is therefore made FINAL,” but fails to respond to Applicant’s argument that at least claims 19 and 52 are generic to Groups I and II. Applicant respectfully requests that the Election of Species Requirement be reconsidered in view of Applicant’s entire argument filed on April 28, 2008 and that a complete response be made of record.

Claim 19 stands rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,738,171. Applicant respectfully requests that the rejection be withdrawn or held in abeyance until the Examiner believes the claims are otherwise in condition for allowance since amendments to the claims during the course of prosecution may obviate the rejection.

Claims 19, 20, 23, 25, 27, 29, 30, 32-35, and 52-56 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,274,914 (“Fan”). The rejection is respectfully traversed.

Prior to the current amendment, claim 19 recited a device comprising, “an array of sensing pixels ... formed of multiple pixel layers; and an optical mask layer ... wherein at least one layer of said multiple pixel layers is formed over said optical mask layer.”

The Office Action asserts that claim 19 is anticipated by Fan because Fan discloses “wherein at least one layer (50) of said multiple pixel layers (50-41) is formed over said optical mask layer (47-49).” The Office Action is correct in that layers 47-49 are “optical” layers. However, layer 50 is not a “pixel layer,” as claimed. Applicant’s specification describes a “pixel

layer” as “fabricated through semiconductor fabrication to form in-pixel circuit elements such as electrodes for the photoreceptor.” (Col. 3, Lines 26-30) A “encapsulant and planarization layer,” such as Fan’s layer 50, cannot be reasonably characterized as an “in-pixel circuit element.” (Col. 6, Lines 40-42) Indeed, Fan does not disclose any layers containing in-pixel circuit elements atop the optical layers. See, for example, Fan’s FIG. 8. Therefore, claim 19, as previously presented, is distinguishable over Fan.

Nevertheless, in an effort to advance prosecution of this application, claim 19 has been amended to recite, “an array of sensing pixels ... formed of multiple pixel layers; and an optical mask layer ... wherein at least one layer of said multiple pixel layers comprising an in-pixel circuit element is formed over said optical mask layer.”

As noted above, Fan’s layer 50, illustrated in FIG. 2, does not comprise “an in-pixel circuit element,” as claimed. To the contrary, the layer 50 is merely an “encapsulant and planarization layer 50.” (Col. 6, Lines 41-42) An “encapsulant and planarization layer” is not an “in-pixel circuit element,” as claimed. For at least these reasons, the claim 19 is believed to be allowable over Fan. Therefore, the rejection of claim 19 should be withdrawn and the claim allowed.

Claims 20-35 depend from claim 19 and are believed to be allowable over Fan for at least the reasons stated above with respect to claim 19 and on their own merits. Therefore, the rejection of claims 20-35 should be withdrawn.

Claim 52 recites limitations similar to those of claim 19 quoted above and is believed to be allowable over Fan for at least the reasons stated above with respect to claim 19 and on its own merits. Therefore, the rejection of claim 52 should be withdrawn and the claim allowed.

Claims 53-56 depend from claim 52 and are believed to be allowable over Fan for at least the reasons stated above with respect to claim 52 and on their own merits. Therefore, the rejection of claims 53-56 should be withdrawn.

Claims 21, 22, 24, 26, 28 and 31 stand objected to, but are otherwise allowable. Claims 21, 22, 24, 26, 28 and 31 depend from claim 19, which is believed to be allowable. Accordingly, the objection should be withdrawn.

In view of the above, Applicant respectfully submits that the present application is in condition for allowance and respectfully requests that it be passed to issue.

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Respectfully submitted,

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